

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Robert Joyner,)
Petitioner,) C/A No. 0:12-2681-MBS
vs.)
S. Wither, Acting Warden,)
Respondent.)
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O R D E R

Petitioner Robert Joyner is an inmate in custody of the Federal Bureau of Prisons. He currently is incarcerated at USP-McCreary in Pine Knot, Kentucky. On September 18, 2012, Petitioner, proceeding pro se, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 in which he challenged his federal conviction and sentence.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling. The Magistrate Judge reviewed the § 2241 petition in accordance with the Rules Governing § 2254 Cases, the Antiterrorism and Effective Death Penalty Act of 1996, and applicable precedents. The Magistrate Judge noted that the relief sought by Petitioner is available, if at all, under 28 U.S.C. § 2255. The Magistrate Judge observed that Petitioner previously had filed a § 2255 motion on July 16, 2008 that was denied on July 27, 2010, as well as a § 2255 motion on September 17, 2012 that remains pending. The Magistrate Judge further noted that Petitioner must seek permission from the United States Court of Appeals for the Fourth Circuit to file a successive § 2255 motion. In addition, the Magistrate Judge noted that, should Petitioner wish to file a § 2241 petition, the petition would be required to be filed in the Eastern District of Kentucky where his custodian is located. Accordingly the Magistrate Judge recommended that the § 2241 petition be dismissed without prejudice and

without requiring Respondent to file a return. Petitioner filed a response to the Report and Recommendation on December 17, 2012.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id.

In his response, Petitioner asserted that he was not filing a § 2255 motion, and that he acquiesced in the Magistrate Judge's determination that Petitioner's § 2241 should be filed in the Eastern District of Kentucky. Petitioner requests the court to adopt the Report and Recommendation. It further appears that Petitioner moves for the voluntary dismissal of his pending § 2255 motion, which motion appears to raise the identical issue as that raised in Petitioner's § 2241 claim.

In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005). The court has thoroughly reviewed the record. The court adopts the Report and Recommendation and incorporates it herein by reference. Petitioner's § 2241 petition is dismissed without prejudice and without requiring Respondent to file a return. The court will separately grant

Petitioner's motion for voluntary dismissal of his pending § 2255 motion.

IT IS SO ORDERED.

/s/ Margaret B. Seymour

Chief United States District Judge

Columbia, South Carolina

January 15 , 2013